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In re Application of : JAN 24 2006
James D. Mitchell, Jr. : **OFFICE OF PETITIONS**
Application No. 09/825,176 : DECISION ON PETITION
Filed: April 3, 2001 :
Attorney Docket No. 029079.0001 :

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed October 27, 2005.

The decision on petition mailed January 3, 2006, is **VACATED**.

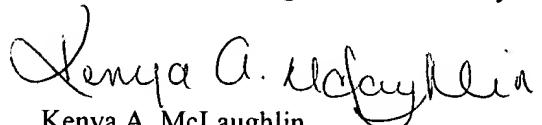
The petition under 37 CFR 1.181(a) is **GRANTED**.

The above-cited application was filed on April 3, 2001. A final Office action was mailed in the application on November 14, 2002, allowing a three-month statutory period for reply. A filing was made on May 14, 2003, which was alleged to contain a Notice of Appeal in response to the final Office action. A review of the application file does not reveal the actual Notice of Appeal filed on May 14, 2003, although copies of the Notice of Appeal received on later dates are noted. Having noted no proper response to the final Office action, the application became abandoned on February 15, 2003. A Notice of Abandonment was mailed on December 12, 2003.

A petition to withdraw the holding of abandonment was first filed on August 18, 2005, wherein petitioner argued that a timely response in the form of a Notice of Appeal was made on May 14, 2003, accompanied by a request for an extension of time within the third month. The petition was dismissed by a decision mailed on October 4, 2005. The petition was dismissed because a statement did not accompany it from the person who signed the certificate of transmission pursuant to 37 CFR 1.8. The instant renewed petition was filed on October 27, 2005, wherein petitioner argues that the person who signed the certificate of transmission is no longer employed by petitioner, but that Ms. Kimberly Chasteen, who signed the petition, has personal knowledge that the Notice of Appeal was transmitted on May 14, 2003. The undersigned has found persuasive petitioner's arguments on the merits of the petition. The petition is granted and the holding of abandonment to withdrawn, accordingly.

The application file is being directed to Technology center 3600, GAU 3671, for further processing.

Questions concerning this decision may be directed to the undersigned at (571) 272-3222.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions